No. 80

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

SCRIPTO, INC.,
Appellant,

vs.

DALE CARSON, as Sheriff of Duval County, Florida, et al.,
Appellees.

On Appeal from the Supreme Court of the State of Florida.

BRIEF FOR THE APPELLEES

RICHARD W. ERVIN
Attorney General
The Capitol
Tallahassee, Florida

JOSEPH C. JACOBS
Assistant Attorney General
The Capitol
Tallahassee, Florida

SAM SPECTOR
Special Assistant Attorney General
The Capitol
Tallahassee, Florida

Counsel for Appellees.

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OPINION BELOW

The opinion of the Supreme Court of the State of Florida is reported officially in 105 So. 2d 775. The final decree of the Circuit Court of Duval County, Florida, is not reported. The opinion of the Supreme Court of Florida (R. 30), the judgment of that court (R. 42), and the final decree of the Circuit Court of Duval County (R. 24), are printed in the record.

JURISDICTION

This suit was brought by the appellant in the Circuit Court of Duval County, Florida, to enjoin the collection

from appellant of a use tax assessed by the State Comptroller pursuant to Chapter 212, Florida Statutes, on the ground that said statute, if construed to make appellant liable for collection of such tax, violates the commerce clause of Article I, Section 8, and the due process clause of Amendment XIV of the Constitution of the United States, and is, therefore, invalid (R. 6-7). The Circuit Court construed the statute to impose such liability on appellant, sustained the validity of the statute as thus construed and applied, and denied appellant the relief sought (R. 24-26). The Supreme Court of Florida, on October 17, 1958, affirmed the judgment of the Circuit Court, and on December 3, 1958 denied appellant's petition for rehearing (R. 42-43). Appellant, on February 28, 1959, filed in the Supreme Court of Florida its notice of appeal to the Supreme Court of the United States (R. 45). By order dated April 21, 1959, a Justice of the Supreme Court of Florida, pursuant to Rule 13 of this Court, granted an extension of time until and including the 29th day of May, 1959, within which to file the record and docket this case on appeal to the Supreme Court (R. 45). The case was docketed in this Court on May 27, 1959, and the Court noted probable jurisdiction on October 12, 1959 (R. 48).

The jurisdiction of the Supreme Court to review this decision by appeal is conferred by Title 28, United States Code, Section 1257 (2).

STATUTE INVOLVED

The Statute which is involved, and the validity of which, as construed and applied in this case, is chal-

lenged by appellant, is Chapter 212, Florida Statutes, known as the Florida Sales and Use Tax Law (Florida Revenue Act of 1949, as amended through the year 1956). That statute is lengthy, and it is, therefore, set out in Appendix A of Appellant's brief. The opinion and judgment of the Supreme Court of Florida is based primarily upon that court's interpretation of Section 212.06 (2) (g) of that statute which requires a "dealer" to collect the use tax, and defines the term "dealer" as follows:

> " 'Dealer' also means and includes every person who solicits business either by representatives or by the distribution of catalogs or other advertising matter and by reason thereof receives and accepts orders from consumers in the state, and such dealer shall collect the tax imposed by this chapter from the purchaser. . . ."

QUESTION PRESENTED

While the appellee agrees substantially with the questions as presented by the appellant, it is our opinion that the question may best be stated in the following manner:

1. Does the finding of the Florida Supreme Court that Scripto, Inc., is a dealer within the contemplation of Chapter 212, Florida Statutes, violate the due process clause of the XIV Amendment or the Commerce Clause, Article I, Section 8, of the Constitution of the United States?

STATEMENT OF THE CASE

Appellant's statement of the case and of the facts involved is substantially correct, and we shall add to such statement only a few points which we feel need to be clarified.

Adgif Company is not a separate corporation, but is wholly owned by the appellant, Scripto, Inc., and part of the business of the appellant is operated under the name of Adgif Company (R. 15). In other words, Adgif Company is merely a trade name used and employed by the appellant for the conduct of certain phases of the appellant's business.

The independent manufacturer's representatives, jobbers and commissioned merchants who solicit orders for Adgif products on behalf of the appellant in the State of Florida, do so under a written agreement with the appellant (R. 19, Exhibit C). This agreement provides, among other things, that such independent manufacturer's representatives, jobbers and commissioned merchants have no authority to, and shall not, make collections or incur any debts involving appellant. Order forms furnished by the appellant to these independent manufacturer's representatives, jobbers and commissioned merchants for use in taking orders in soliciting on behalf of the appellant, contain a similar provision (R. 21, Exhibit D).

The Circuit Court found in the Final Decree that the appellant, Scripto, Inc., is a "dealer" within the intent and meaning of Chapter 212, Florida Statutes, 1955,

as to orders solicited by independent manufacturer's representatives, jobbers and commissioned merchants in the State of Florida, for the sale by the appellant, under the trade name of Adgif Company, of merchandise shipped into the State of Florida by appellant for use and consumption therein. The Decree found further that such requirement of the statute was a valid exercise of the taxing powers of the State of Florida and was not unconstitutional as contended by appellant. The appellant took an appeal from the Final Decree entered by the Circuit Court (R. 26).

On the appeal the Supreme Court of Florida stated in its opinion filed October 17, 1958, as follows:

> "It is no answer to point out that the Florida representatives of the appellant operate and own independent business as commissioned jobbers. To the extent that they contact Florida consumers in the interest of advancing appellant's business and in bringing about sales of appellant's commodities to Florida customers, they are just as much representatives of the appellant under the subject statute as if they were salaried employee solicitors operating pursuant to identical limitations of contract. Bear in mind that their Florida jobbers represent appellant in Florida pursuant to specific written contracts" (R. 41). The appellant, "Scripto, Inc. is a dealer within the contemplation of Chapter 212, Florida Statutes, and as such should register in the State of Florida as required by that act and collect and remit to the State of Florida through its Comp-

troller the Use Tax imposed by the state on the mechanical writing instruments sold to Florida customers by Scripto, Inc. via Adgif" (R. 42).

ARGUMENT

It is the opinion of the appellee in this case that we must first consider the finding of the Florida Supreme Court in the construction of the statute in question, Chapter 212 and particularly Section 212.06(2)(g). An elementary but very significant principle of law is that federal courts, including the Supreme Court of the United States, are bound by the construction given by state courts of last resort to their own constitution and laws enacted thereunder, and that federal courts, as a general rule, will follow the decisions of the highest court of a state, unless such decisions conflict with or impair the efficacy of some principle of the Federal Constitution or of a federal statute. (American Jurisprudence, Courts, Section 99)

In this case the United States Supreme Court is bound by the holding of the Florida Supreme Court that Scripto, Inc., is a dealer within the contemplation of the Florida Statute to the same extent as it considered itself bound by the construction given an Iowa Statute by the Supreme Court of Iowa in *General Trading Company vs. State Tax Comm. of Iowa,* (1944) 322 U.S. 335, 88 L. Ed. 1309.

In urging that the construction given by the Florida Supreme Court to Chapter 212, Florida Statutes, holding to be a "dealer" under the statute, renders the statute

unconstitutional, the appellant contends that under such construction the statute violates the commerce clause and due process clause of the Federal Constitution.

There have been a number of decisions by the United States Supreme Court in which state use tax acts have been found to be a valid exercise of a state's taxing powers under factual situations very similar to the case at bar. Apparently, appellant has overlooked these several decisions which we think are controlling.

Appellant relies chiefly on *Miller Bros. Co. vs. Maryland* (1954) 347 U.S. 340, 98 L. Ed. 744. As we view this case, it is based on facts that are so dissimilar and so clearly distinguishable from the facts in the instant case that it can in no way be controlling.

It is our contention that *General Trading Company vs. State Tax Comm. of Iowa,* (1944) 322 U.S. 335, 88 L. Ed. 1309, sets forth the principal that is applicable to the case at bar. In this case the Supreme Court of the United States had before it a case wherein a Minnesota corporation, which had not qualified to do business in Iowa and which maintained no office or other place of business there, made sales of goods in Minnesota which were sent by common carrier, or by mail, to purchasers in Iowa. Orders solicited in Iowa by salesmen from headquarters in Minnesota were taken subject to acceptance by General Trading Company, the Minnesota corporation, at the home office in Minnesota. The question before the Court was whether or not an Iowa statute imposing a tax upon the *use* of goods sold by the Minnesota

corporation to consumers in Iowa, under which the Minnesota corporation was required to collect the tax and pay it over to the State of Iowa, violated the Constitution of the United States.

Prior to the appeal to the United States Supreme Court, the Iowa Supreme Court had determined that General Trading Company, the Minnesota corporation, was required to collect the use tax on personal property sold by it for use in Iowa. In this situation, the United States Supreme Court on the appeal held that the state court's application of its local laws was binding on the United States Supreme Court and ruled accordingly. The only question therefore before the Supreme Court of the United States was, as stated above, whether the Iowa Use Tax Law, as construed by the Iowa Court, was in violation of the Federal Constitution.[1]

In finding that the Iowa Statute, as construed by the Iowa Court, did not violate the Federal Constitution, the United States Supreme Court had this to say:

> ". . . the mere fact that property is used for interstate commerce or has come into the owner's possession as a result of interstate commerce does not diminish the protection which he may draw from a state to the upkeep of which he may be asked to bear his fair share. But a fair share precludes legislation obviously hostile or practically discriminatory to-

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[1]The persons soliciting the Iowa sales for General Trading Company were apparently employees of General Trading Company. In the case at bar, Adgif's merchandise is sold only by commissioned agents, although Scripto does have an employee salesman in the State of Florida. We shall hereinafter demonstrate that, in either case, the legal result must be the same.

ward interstate commerce. See *Best & Co. vs. Maxwell*, 311 U.S. 454.

"None of these infirmities affects the tax in this case any more than it did in the other case with which it forms a group. *The tax is what it proposes to be—a non-discriminatory excise laid on all personal property consumed in Iowa.* The property is enjoyed by an Iowa resident partly because the opportunity is given by Iowa to enjoy property no matter whence acquired. The exaction is made against the ultimate consumer—the Iowa resident who is paying taxes to sustain his own state government. *To make the distributor the tax collector is a familiar and sanctioned device.*" *Monomotor Oil Co. vs. Johnson*, 292 U.S. 86, 93-94; *Felt vs. Gallagher*, 306 U.S. 62 (Emphasis supplied)

There have been a number of other opinions of the Supreme Court of the United States touching on the use tax question involved herein. Practically all of these opinions by the United States Supreme Court pertinent to the facts in the instant case have been thoroughly examined and discussed by the Supreme Court of Maryland in a case similar to the case at bar—*Topps Garment Manufacturing Corporation vs. State of Maryland*, (1957) 128 A. 2d 595.

In *Topps Garment Manufacturing Corporation*, the issue involved was the right of the State of Maryland to compel a foreign corporation, not qualified to do business in Maryland, to collect a use tax on goods shipped by the foreign corporation directly to resident purchasers, on orders solicited within the State of Maryland by commissioned salesmen, who were not employees of

the foreign corporation, where such orders were accepted by the foreign corporation outside the territory of the State of Maryland.

The stipulation of facts entered into by the foreign corporation and the State of Maryland showed that Topps Garment Manufacturing Corporation is an Indiana corporation which manufactures uniforms that it sells in various states of the United States. It neither owns nor rents any office, showroom, distribution center or warehouse in Maryland. It sells its products to Maryland purchasers by means of independent commissioned solicitors, some of whom are Maryland residents. These solicitors are furnished with catalogs and order blanks by the corporation. They are not on Topps' payroll, are not under supervision of Topps and do not account to Topps for their time or on whom they call with catalogs. When a solicitor takes an order for goods shown in the catalog, he receives a percentage of the price as a deposit, which he retains as his commission. The order is then mailed by the solicitor to Topps, which has the right to accept or reject it. If the order is accepted, the goods are mailed by Topps direct to the purchaser, usually C.O.D., but in some cases on credit or open account. Solicitors come and go.

The Comptroller of the State of Maryland made attempts to obtain permission from Topps for an audit of all Maryland sales during the limitations period, so as to have a basis for a use tax assessment. Such attempts at an audit failed, however, and the Comptroller eventually made an estimated assessment, filing a lien in the Circuit

Court, whereupon an attachment was issued, and a Topps account with one of its customers was garnished. Topps thereupon brought suit attacking the validity of the judgment purely on constitutional grounds and did not, as does Scripto in the case at bar, deny that the Use Tax Statute in terms imposes upon a foreign corporation the liability to collect a use tax on goods sold to Maryland purchasers. However, Topps did contend, as does Scripto in the case at bar, that in the light of its slight connection with the State of Maryland, the statute attempting to make it liable for the collection of the tax offended both the Commerce Clause and the Due Process Clause of the Federal Constitution.

As hereinabove stated, the Maryland Court in reaching its decision that Topps Garment Manufacturing Corporation was liable for the collection of the Maryland use tax on sales made by it to persons in Maryland reviewed at length the various decisions of the United States Supreme Court which it deemed pertinent to the facts before them, and, in respect to the decisions had this to say:

> "*In General Trading Co. v. State Tax Commission*, 322 U.S. 335, 88 L. Ed. 1309, The Supreme Court held that Iowa, under her use tax law, which imposed upon 'Every retailer maintaining a place of business' in the State the duty to collect the tax from the purchaser, could constitutionally compel an out of state corporate vendor to collect the tax. In that case, a Minnesota corporation which had never qualified as a foreign corporation in Iowa and which did not maintain there any office, branch or warehouse, sent salesmen into the State to solicit or-

ders that were always subject to acceptance or rejection in Minnesota whence the goods were shipped by common carrier or the post to the Iowa buyers, the Court noted that no State could tax the privilege of doing interstate business, but that a non-discriminatory excise tax on all personal property consumed within the State, laid against the ultimate consumer—the Iowa resident was valid, as had previously been held, and that 'To make the distributor the tax collector for the State is a familiar and sanctioned device.' A judgment for the State was upheld against the foreign corporation which had entered its appearance to contest the claim.

"In *Miller Bros. Co. vs. Maryland*, 347 U.S. 340, 98 L. Ed. 744, the Supreme Court reversed a judgment of this Court and held that the due process clause of the Fourteenth Amendment prevented Maryland from making Miller Brothers Company, a Delaware corporation, the collector of use tax on goods sold directly to inhabitants of Maryland at the corporation's store in Delaware. The vendor's only connection with Maryland was advertising in Delaware papers and radio stations that reached the notice of Marylanders, the occasional mailing of notices to former customers some of whom lived in Maryland, and the delivery of some purchases in Maryland by its own truck. Mr. Justice Jackson, who wrote the opinion of the majority of five Justices, noted that he had dissented in the *General Trading Co.* case and that whether or not in so doing 'he made a correct application of principles of jurisdiction to the particular facts, it is clear that circumstances absent here were there present to justify the Court's approval of liability for collecting the tax.' He continued: 'That was the case of an out-of-state merchant entering the taxing state through traveling sales agents to conduct continuous local

solicitation followed by delivery of ordered goods to the customers, the only nonlocal phase of the total sale being acceptance of the order. Probably, except for credit reasons, acceptance was a mere formality, since one hardly incurs the cost of soliciting orders to reject. The Court could properly approve the State's decision to regard such a rivalry with its local merchants as equivalent to being a local merchant.

"In *Thompson v. Rhodes-Jennings Furn. Co.*, 268 S.W. 2d 376, the Supreme Court of Arkansas followed the *General Trading Co.* case on analogous facts, having concluded that *Miller Brothers* had in no way impaired its validity and authority. The Supreme Court denied certiorari under the name of Branyan & Peterson v. Thompson, 348 U.S. 872, 99 L. Ed. 686. See also Field Enterprises v. State (Wash.) 289 P. 2d 1010, affirmed by the Supreme Court, 1 L. Ed. 2d 39, as reiterating that the commerce clause is not offended by what Maryland requires of appellant. We conclude that unless there is a controlling distinction between the facts here and those of *General Trading Co.*, the answer here is given by that case. Appellant argues that there is a difference in that the salesmen in General Trading were servants of the foreign corporation continuously in its employ, while in the case at bar, the solicitors in Maryland were independent contractors not under supervision and were part time employees who often represented other vendors. Appellant's contention on this point seems to be directed at showing that there could be due process in requiring a corporation in the position of General Trading Company to act as collector of taxes, but that there would be a lack of due process in requiring one situated as is Topps to perform that function.

"The fact that the solicitors in the present case were agents who were independent contractors, rather than agents who were servants makes no difference. It is beyond question that they were agents of Topps for the purpose of displaying its products by means of its catalogs, for the taking of orders for those products, for the forwarding of the orders to headquarters and for the purpose of accepting deposits on the sales. The activities of the individual solicitors may have been intermittent but in total their activities were regular, systematic and productive of a substantial flow of goods into Maryland. The Supreme Court made it plain in *International Shoe Co. v. Washington*, 326 U.S. 310, 90 L. Ed. 95, that an unqualified foreign corporation could be made subject to jurisdiction and compelled to make contributions required of local employers to the state unemployment compensation fund where its presence was evidenced only by regular and systematic solicitation of orders in the state by salesmen on commission, resulting in a continuous interstate flow of the corporation's products to resident buyers (the only additional activity was the display of samples). Mr. Justice Stone said inter alia that the presence of a corporation without, as well as within, the State of its origin can be manifested only by activities carried on in its behalf by those who are authorized to act for it and such contacts of a corporation with the state of the forum as make it reasonable in the context of our federal system of government, to require the corporation to defend a particular suit brought there may satisfy the demands of due process. See also *United States v. Seephony Corporation*, 333 U.S. 795, 92 L. Ed. 1091. We think that activities carried on in behalf of the foreign corporation by agents who are independent contractors, in connection with the matters for

which they are agents, are as much in behalf of the corporation as similar activities carried on by agents who are servants, and we see no significant distinction in the two situations. The test is the nature and the extent of the activities. *State v. Penna. Steel Co.*, 123 Md. 212.

"The Supreme Court gave indication of this in the *General Trading Co.* case, when it pointed out that *Felt & Warrant Mfg. Co. v. Gallagher*, 306 U.S. 62, 83 L. Ed. 488, and *Nelson v. Sears, Roebuck & Co.*, 312 U.S. 359, 85 L. Ed. 888, were controlling although in the *Gallagher* case, there were far more elaborate arrangements for soliciting orders (two exclusive distributors), and in the *Sears* case, the vendor had retail stores in the State, and said: 'All these differentiations are without constitutional significance.' In *Travelers Health Asso. v. Virginia*, 339 U.S. 643, 94 L. Ed. 1154, the foreign company was a non-profit membership association incorporated in Nebraska, where its only office was located. It conducted a mail order health insurance business systematically soliciting new members, usually through the unpaid activities of Virginia residents who were already members. Virginia enjoined it from further solicitation of sales in the State. The Court held that its contacts with Virginia were sufficient to sustain jurisdiction, relying in part on the *International Shoe Co.* case. In *McGoldrick v. Berwind-White Coal Co.*, 309 U.S. 33, 49, 84 L. Ed. 565, 572, the Supreme Court equated the New York City tax on sales for consumption in the city with the ordinary use tax, such as is before us, that the Court had previously sustained as constitutional. In *McGoldrick v. DuGrenier, Inc.*, 309 U.S. 70, 84 L. Ed. 584, a Massachusetts corporation accepted or rejected at its headquarters in Massachusetts orders solicited in New York City by an independent con-

tractor, Stewart & McGuire, Inc., and shipped its products direct to the purchaser. It was held that to hold it liable to collect the tax did not infringe the Constitution. Professor Thomas Reed Powell, in a note in 57 Harvard L.R. 1086, 1090, '*Sales and Use Taxes Collection from Absentee Vendors*,' says of the Dugrenier case: 'Although the New York headquarters and activities availed of by these vendors were not their own but those of another, these exclusive agents amounted to an alter ego who, except possibly for some difference in methods of compensation and control, did exactly what the vendor might do through its own hired men. Obviously it would open the door to easy devises for tax avoidance if slight shifts in the contractual arrangements between solicitors and vendors could make a difference.' *Bomze v. Nardis Sportswear*, 165, F. 2d 33, held that activities in the State of an agent in form certainly and in substance essentially an independent contractor, made the principal subject to jurisdiction. In distinguishing a New York case, Judge Learned Hand said for the Court: '. . . we cannot see that it was important that the agent worked for several principals.' See also *Labente v. American Mercury Magazine*, (N.W.) 96 A. 2d 200; *Fielding v. Superior Court* (1st App. Dist. Cal.) 244 P. 2d 968, 970; *Wooster v. Triwest Mfg. Co.* (Mo.), S.W. 2d 411; *Holland v. Parry Nev. Co.*, 7 F.R.D. 471; *Johns v. Bay State Abrasive Products Co.*, 89 F. Supp. 654, 660; *Com. de Astral v. Boston Mfg. Co.*, 205 Md. 237; *Storey v. United Ins. Co.*, 64 F. Supp. 896; *Fletcher Cyclepedia Corporations*, Perm, Md. Vol. 18, Sec. 8718; *The Growth of the International Shoe Doctrine*, 16 University of Chicago L.R. 523; *Expanding Jurisdiction over Foreign Corporations*, 37 Cornell L.Q. 458; *Enforcing State Consumption*

Taxes on Out-of-State Purchases, 65 Harvard L.R. 301.

"We think it clear from the authorities cited that appellant is not helped by the fact that its soliciting agents in Maryland were independent contractors, and that its activities in and in relation to Maryland clearly accord with the 'traditional notions of fair play and substantial justice' which the *International Shoe Co.* case says are proper tests to determine whether a state may exercise jurisdiction in a particular situation. We think the authorities establish that appellant is not denied due process of law by what the State has done. . . ."

The case of *Miller Bros. Co. vs. Maryland*, 347 U.S. 340, 98 L. Ed. 744, on which the appellant relies, does not, as we have already asserted, have any application whatever to the case at bar. In that case, the holding was that a department store located in Wilmington, Delaware, could not be forced to collect a use tax for the State of Maryland on merchandise purchased at the Delaware store by Maryland residents for use in the State of Maryland.

The stipulated facts in that case show that Miller Brothers Company did no advertising in the State of Maryland other than to occasionally mail to known customers in Maryland fly sheets on some special sale. Occasional deliveries were made from the Delaware store to customers residing in Maryland; and occasional deliveries were made in Maryland by parcel post or express. Miller Brothers Company had no way whatever to determine how much merchandise was purchased at its store in Delaware by residents of Maryland for use

in Maryland, the residence of such persons being unknown to the store. Under such facts, it was held that Miller Brothers Company was not required to collect Maryland use tax for merchandise sold by it to Maryland residents while in Delaware, who used such merchandise in the State of Maryland.

The controlling facts in the *Miller Brothers Company* case are entirely different from the facts in the instant case. Scripto, Inc. employs a salesman residing in the State of Florida (A. 14); employs ten independent manufacturer's representatives, jobbers and commissioned merchants in the State of Florida to solicit orders for Scripto merchandise (A. 43); furnishes such representatives catalogs, order forms, samples, sample cases and advertising material to assist them in the solicitation of orders in the State of Florida (A. 16); accepts payment for all merchandise sold for use in the State of Florida directly from the Florida customer (A. 16); pays directly to said solicitors a commission for all sales made in the State of Florida (A. 16); and consummates all sales by shipment, of merchandise to be used in the State of Florida directly to purchasers of same in the State of Florida (A. 16).

The case *Thompson v. Rhodes-Jennings Furniture Company*, (Ark.) 268, S.W. 2d 376, Cert. den., 348 U.S. 872, 99 L. Ed. 686, referred to in the opinion of the Supreme Court of Maryland in *Topps Garment Manufacturing Corporation vs. State of Maryland*, supra, was a case wherein the facts were similar to those in the case at bar, in which the Miller Brothers Company case was

relied on as forbidding the requirement of use tax collection by the State of Arkansas. It was determined in that case that the *Miller Brothers Company* case was in no way controlling.

Rhodes-Jennings Furniture Company was located in Memphis, Tennessee, and employed sales representatives similar to those employed by Scripto, Inc. to solicit business in Arkansas. The salesmen would receive orders in Arkansas, send them to Tennessee for acceptance or rejection, and upon acceptance, the merchandise would be shipped from Tennessee to the purchaser's address in Arkansas, for use in Arkansas. Decision in the case, by stipulation of the parties, was withheld by the Supreme Court of Arkansas until the United States Supreme Court should decide the case of *Miller Bros. Co. vs. Maryland*. The Arkansas Court held that the solicitation of orders by the Tennessee Company through its representative in the State of Arkansas, made the Tennessee Company liable to collection from Arkansas purchases of use tax due the State of Arkansas, by reason of the use of merchandise so solicited to Arkansas residents. The Arkansas Court further held that the holding, in the case of *General Trading Company vs. State Tax Commissioner*, 322 U.S. 335, 64 S.C. 1028, 88 L. Ed. 1309, was controlling and that the decision in the *Miller Brothers Company* case had no application. The United States Supreme Court denied certiorari in the case, and refused to review same.

We submit that to require the appellant, Scripto, Inc., to collect Florida Use Tax due the State of Florida on

merchandise sold by Scripto, Inc. to Florida residents and shipped by Scripto, Inc. from its factory in Atlanta for use or consumption in the State of Florida, in no way violates the Commerce Clause or the Due Process Clause of the Federal Constitution.

CONCLUSION

It is our conclusion, therefore, that the holding of the Florida Supreme Court that Scripto, Inc. is a dealer within the contemplation of Chapter 212, Florida Statutes, and that as such it should register in the State of Florida as required by that act and collect and remit to the State of Florida through its Comptroller the Use Tax imposed by the State on the mechanical writing instruments sold to Florida customers by Scripto, Inc., via Adgif, does in no way violate the commerce clause or the due process clause of the Federal Constitution. The Florida Supreme Court was correct in so holding and its decision should be affirmed.

Respectfully submitted,

RICHARD W. ERVIN
Attorney General

JOSEPH C. JACOBS
Assistant Attorney General

SAM SPECTOR
Special Assistant Attorney General

PROOF OF SERVICE

I, Richard W. Ervin, Attorney for Dale Carson, Sheriff of Duval County, Florida, and Ray E. Green, as Comptroller of the State of Florida, Appellees herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the _____ day of January, 1960, I served copies of the foregoing brief for the appellees on the appellant therein named as follows: on Scripto, Inc., a Georgia corporation, by mailing a copy thereof in a duly addressed envelope with airmail postage prepaid, to Ernest R. Rogers, 1045 Hurt Building, Atlanta 3, Georgia, Attorney of Record for said appellant.

RICHARD W. ERVIN,
Attorney General
Attorney for Appellees
State Capitol
Tallahassee, Florida